




Speech By
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MEMBER FOR TOOHEY

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

 **Mr RUSSO** (Toohey—ALP) (5.17 pm): I rise to speak to the Justice and Other Legislation Amendment Bill 2023. The Legal Affairs and Safety Committee, in its report No. 50, tabled in the Assembly on 28 July 2023, has recommended to the Assembly that this bill be passed. Our committee made a total of seven recommendations as a result of our consideration of the proposed bill.

The purpose of the bill is to clarify, strengthen and update legislation concerning the administration of justice, including legislation relating to the operation of courts and tribunals, the regulation of the legal profession, the conduct of civil proceedings and electoral matters. Overall, the bill amends 30 acts and four regulations, as well as repealing the Court Funds Act 1973. Further amendments for consideration in detail have been recommended and will be introduced, as the Attorney-General outlined during her second reading speech.

These amendments relate to the removal of restrictions in the Criminal Law (Sexual Offences) Act 1978 prohibiting the identification of an adult defendant charged with a prescribed sexual offence prior to the finalisation of committal proceedings. Other than the Northern Territory, Queensland is the only state or territory that currently maintains a defendant's anonymity in these cases. Further deliberation proposes the amendment to commence on 3 October 2023 for part 9 of the bill to ensure the amendments to the act commence in a timely way, and to provide maximum clarity, transparency and notice to relevant stakeholders. A media guide is to be developed and distributed to media organisations and journalists prior to this date to assist their reporting on relevant sexual violence matters before the courts.

These amendments were proposed in response to the government's commitment to implement recommendation 83 of the Women's Safety and Justice Taskforce report *Hear her voice—report 2: Women and girls' experiences across the criminal justice system*, which concluded that there was no justification for the law to treat defendants who are charged with a prescribed sexual offence differently to those who are charged with any other criminal offence. DVConnect, in their submission to the inquiry, put it plainly when they stated—

These protections are in part due to historical mistrust of sexual violence reporting. Not only is it evident that this was implemented into our legal system based on false assumptions, but the ongoing application of such protections perpetuate rape myths and general community mistrust that victims of sexual violence make up complaints to damage reputations of defendants or to preserve their own reputation or regret ... Removing this protection adds support to the concept that victims must be believed.

The committee recognised the importance of the development of a sexual violence media guide being developed and distributed prior to the introduction of the amendments in order to provide a framework for media organisations to incorporate a trauma informed approach to reporting and interviewing. The positive outcomes that would potentially arise from the development of a guide for the media led to recommendation 2, which states—

The committee recommends that the Queensland Government prioritise the development of a guide for the media to support responsible reporting of sexual violence in accordance with Recommendation 84 of the Hear her voice Report 2.

The committee noted the Women's Legal Service Queensland's feedback and their general support for the CL(SO) Act amendments, including the increased media reporting possibly leading to more victims coming forward to report sexual offences, as well as greater positive community discussions about gender-based violence. The committee considered that the removing of restrictions in the CL(SO) Act may have undesirable or negative consequences for the victims of any alleged sexual offence. This could take the form of an increase in the reluctance of victim-survivors to report due to fear of retaliation and create a barrier for women making a complaint.

The committee's recommendation 3 was that the Queensland government monitor whether the naming of offenders unintentionally creates barriers for women to report sexual offences. This was an important recommendation as the committee noted the purpose of the amendments is to promote open justice and freedom of speech and to bring the class of offences in line with all other criminal offences in Queensland. However, this was regarding publishing of information about a person accused of an offence.

The bill proposes to better recognise the deaths of unborn children that have occurred as a result of offences committed in relation to a pregnant person. As it is currently legislated, Queensland law does not give an unborn child legal status as a person. This only occurs when a legal position is attained known as the 'born alive' rule. This means offences such as murder and manslaughter do not apply in relation to an unborn child. Sarah and Peter Milosevic support the recognition of an unborn child who has been killed due to criminal conduct, with their submission reflecting on the loss of Sophie Ella. They told the committee—

The impact on a family that loses a child because of someone else's actions adds another layer of grief, there was no justice for us ... this law reform while it doesn't bring your child back at least you know that your baby counted. She received a birth certificate, death certificate and was counted as a death on the road toll, the only place she wasn't counted was in a court.

In response to concerns raised by other stakeholders regarding the inference of creating a legal status of an unborn child, the department provided the following advice—

The bill does not introduce a new offence and it does not introduce a circumstance of aggravation. The bill introduces an aggravating factor. An aggravating factor only comes into play after the person has been convicted of the offence.

This amendment will allow the unborn child to be recognised on an indictment at the discretion of the parents, which will aid in the healing process for many parents and families.

The bill makes several amendments to the Legal Profession Act 2007 by proposing changes to the requirements of law practices to retain client documents. The bill proposes to allow a law practice, the Queensland Law Society and community legal centres to destroy or dispose of any client documents if seven years have passed since the completion of the matter if the practice was unable to obtain instructions from the client, despite making reasonable efforts to do so.

The bill will also apply to client documents held by the Queensland Law Society where it holds client documents of law practices that have gone into receivership with this section applying to the documents held by QLS for a reason other than an appointment of a receiver for the law practice. This amendment was welcomed by representative stakeholders, many of whom expressed a similar view in that file maintenance and destruction, particularly legacy paper files and archives, can be a time-consuming, painstaking and expensive process.

While some concern was raised regarding the destruction of client records, DJAG noted that the provisions do not compel a law practice, or community legal centre, to destroy records. The provision is proposed to apply in the absence of client instructions and any decision must be reasonable in all the circumstances and having regard to the nature of the documents.

The bill further proposes to increase the cost disclosure threshold in section 311 of the Legal Profession Act to \$3,000. An amendment will be introduced to increase the proposed threshold for abbreviated cost disclosure in the Legal Profession Act from \$750 to \$1,500 on the basis that non-disclosure below the current detailed costs disclosure of \$1,500 has not been identified as an issue in practice. Some stakeholders suggested a higher increase in the cost disclosure threshold will reduce the regulatory burden for law practices and promote cost transparency for consumers of legal services. The committee noted the concerns raised. However, it supported the premise that clients should have full and frank disclosure of legal costs.

Amendments to the Electoral Act 1992 would allow completed postal votes that are not inside the reply paid envelopes supplied by the Electoral Commission of Queensland to be counted. The Electoral Commission is particularly supportive of this amendment and estimates this measure will save up to 30 per cent of the 57,000 rejected postal votes, which is a significant number of postal votes deemed invalid under the current act. I am sure there would be some candidates who ran in previous elections who would also welcome this amendment. Furthermore, by adopting this measure Queensland will align with other jurisdictions around postal votes.

The Electoral Commission also welcomed the bill's proposed changes to the definition of 'special postal voter' to include patients in a hospital that is not a polling place or who are ill or infirm and unable to travel to a polling place as this amendment will align the act with the Commonwealth definition of 'general postal voter', 'providing those electors certainty about their status in both State and federal elections'.

This bill will also amend the Supreme Court of Queensland Act 1991 to provide that an admission guideline takes effect on the day it is published on the court's website, or a later day fixed in the guideline, rather than on the minister giving notice of the issuing of the guidelines. I commend the bill to the House.